

DEPARTMENT OF INDUSTRIAL RELATIONS

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March 26, 2009

The Honorable Joseph Miller, Chairman
and fellow Commissioners
Workers' Compensation Appeals Board
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

RE: Almaraz v. Environmental Recovery Services aka Enviroserve and State Compensation Insurance Fund, Guzman v. Milpitas Unified School District, Permissibly Self-Insured, Keenan & Associates, and Ogilvie v. City and County of San Francisco, Permissibly Self-Insured

Dear Chairman Miller and Commissioners:

I write to you as Administrator of the Uninsured Employers Benefits Trust Fund and the Subsequent Injuries Benefits Trust Fund, both workers' compensation funds that pay benefits to workers injured in the course and scope of their employment. As you are no doubt aware, the Board's en banc decisions in Almaraz v. Environmental Recovery Services aka Enviroserve and State Compensation Insurance Fund, ADJ1078163 (BAK 0145426), Guzman v. Milpitas Unified School District, Permissibly Self-Insured; Keenan & Associates ADJ3341185 (SJO0254688), and Ogilvie v. City and County of San Francisco, Permissibly Self-Insured, ADJ1177048 (SFO 0487779), have caused much controversy in the workers' compensation community. These decisions already are having substantial impact both on the administration of the workers' compensation adjudication system and on the level of workers' compensation benefits due injured workers. Recently, for example, the Workers' Compensation Insurance Rating Bureau announced a large mid-term proposed premium rate increase, of which 5.8% was directly attributed to the Board decisions. That percentage is considered on the low end of conservative assumptions.

While neither fund of which I am the Administrator is a party in these cases now before you, both funds are greatly affected by the recent decisions. As such, I hereby request that you vacate the decisions on your own motion because, among other reasons, the announced rebuttal criteria discussed in Almaraz and Guzman are unclear and the lack of clarity is having far-reaching, system-wide effects.

As part of your consideration whether to vacate the decisions for the reasons stated, or as part of your current deliberations, I suggest that it may prove beneficial to solicit argument from a broader range of stakeholders in the workers' compensation system than simply those who are parties to the cases. Such a solicitation would be consistent with Board action in the past when it invited amicus briefing in matters of potentially far-reaching effect. (See Costa v. Hardy)

Chairman Joseph Miller and
WCAB Commissioners
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I am confident you will give my request serious consideration for the reasons described.

Sincerely,

ORIGINAL SIGNED BY:

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Director

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